

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PATRICIA S. ABBOTT,

Plaintiff,

v.

Case No. 3:12CV202

WAFFLE HOUSE, INC.,
EAST COAST WAFFLES, INC.,
AND
R.C.G.T, INC.

Defendants.

Plaintiff's Motion To Compel Discovery
From Waffle House, Inc., And East Coast Waffles, Inc.

Comes now the plaintiff, by counsel, and moves the Court to enter an order compelling discovery from the defendants Waffle House, Inc., and East Coast Waffles, Inc.¹ on the following grounds and also for the reasons set forth in the accompanying memorandum in support of plaintiff's motion to compel discovery:

1. Waffle House received plaintiff's discovery request, Ex. 1 of October 20, 2011 ("October 2011 Discovery") that required the defendants to produce documents, identify witnesses, and facts.
2. After considerable delay, the defendants finally served a late response on February 3, 2012 which consisted mainly of objections. See Exhibit 2 attached.

¹ Hereinafter Waffle House, Inc. is referred to as "WH", and East Coast Waffles, Inc. is referred to as "ECW" and WH and ECW are referred to collectively as "Waffle Defendants". Emphasis in any form in this motion, the accompanying memorandum, and the exhibits such as underlining, highlighting, italics, etc. has been supplied by plaintiff's counsel unless otherwise

3. The Waffle Defendants made a partial Rule 26 disclosure (See Exhibit 3 attached) but never revealed who noticed the light was out in the parking lot, who repaired it and who supervised the repairs.

4. The corporate officer and in-house attorney for the Waffle Defendants Gregory J. Newman acknowledged plaintiff's counsel's request of December 21, 2009 (Exhibit 4) to preserve documentation and other evidence related to the claim. See Newman's acknowledgment letter attached as Exhibit 5.

5. The deposition of Ronald Wayne Shelton, the Waffle Defendants' grill operator and employee in charge of the restaurant at the time of the accident, was taken on May 22, 2012. See Exhibit 6 attached.

6. It became obvious, especially after the Shelton deposition, that the Waffle Defendants had at best failed to answer the discovery requests and comply with their Rule 26 duties and that additional discovery responses were required.

7. In an effort to obtain the discovery responses without filing a motion to compel, plaintiff's counsel sent a letter to the attorney for the Waffle Defendants, Exhibit 7.

8. The Waffle Defendants' attorneys have failed to address the shortcomings in their discovery responses as detailed in Exhibit 7, as the Waffle Defendants' attorney confirmed only that evidence was destroyed related to the replacement of the light that did not function (Exhibit 8) and stated they would further respond in the following week. They did not.

Wherefore, given the reasons set forth hereinabove, in Exhibit 7, and the accompanying memorandum in support of this motion to compel, the plaintiff, by counsel, moves the Court to enter an Order compelling discovery, and to award to her attorneys' fees as provided for by the

noted.

local rules of court and the Federal Rules Of Civil Procedure. Plaintiff's counsel hereby certifies that he has made a good faith effort to resolve the subject matter of this motion without success.

PATRICIA S. ABBOTT,

by _____/s/_____
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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